

§ 26.81

licensee or other entity shall perform drug and alcohol testing. The results must be negative before the individual returns to performing the duties that require the individual to be subject to this subpart. However, if the physical condition is the smell of alcohol with no other behavioral or physical indications of impairment, then only an alcohol test is required and the results must be negative before the individual returns to performing his or her duties.

(2) If a licensee or C/V who is subject to subpart I of this part is certain that the observed behavior or physical condition is the result solely of fatigue, the licensee or C/V shall ensure that a fatigue assessment is conducted under § 26.211. If the results of the fatigue assessment confirm that the observed behavior or physical condition is the result solely of fatigue, the licensee or C/V need not perform drug and alcohol tests or implement the determination of fitness process otherwise required by § 26.189.

(3) For other indications of possible impairment that do not create a reasonable suspicion of substance abuse (or fatigue, in the case of licensees and C/Vs who are subject to subpart I of this part), the licensee or other entity may permit the individual to return to performing his or her duties only after the impairing or questionable conditions are resolved and a determination of fitness indicates that the individual is fit to safely and competently perform his or her duties.

(c) If a licensee or other entity has a reasonable belief that an NRC employee or NRC contractor may be under the influence of any substance, or is otherwise unfit for duty, the licensee or other entity may not deny access but shall escort the individual. In any such instance, the licensee or other entity shall immediately notify the appropriate Regional Administrator by telephone, followed by written notification (e.g., e-mail or fax) to document the oral notification. If the Regional Administrator cannot be reached, the licensee or other entity shall notify the NRC Operations Center.

10 CFR Ch. I (1–1–16 Edition)

Subpart E—Collecting Specimens for Testing

§ 26.81 Purpose and applicability.

This subpart contains requirements for collecting specimens for drug testing and conducting alcohol tests by or on behalf of the licensees and other entities in § 26.3(a) through (d) for the categories of individuals specified in § 26.4(a) through (d) and (g). At the discretion of a licensee or other entity in § 26.3(c), specimen collections and alcohol tests must be conducted either under this subpart for the individuals specified in § 26.4(e) and (f) or the licensee or other entity may rely on specimen collections and alcohol tests conducted under the requirements of 49 CFR Part 40 for the individuals specified in § 26.4(e) and (f). The requirements of this subpart do not apply to specimen collections and alcohol tests that are conducted under the requirements of 49 CFR Part 40, as permitted in this paragraph and under §§ 26.4(j) and 26.31(b)(2) and Subpart K.

§ 26.83 Specimens to be collected.

Except as permitted under § 26.31(d)(5), licensees and other entities who are subject to this subpart shall—

(a) Collect either breath or oral fluids for initial tests for alcohol. Breath must be collected for confirmatory tests for alcohol; and

(b) Collect only urine specimens for both initial and confirmatory tests for drugs.

§ 26.85 Collector qualifications and responsibilities.

(a) *Urine collector qualifications.* Urine collectors shall be knowledgeable of the requirements of this part and the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to urine collection procedures. Collectors shall receive qualification training that meets the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) All steps necessary to complete a collection correctly and the proper completion and transmission of the custody-and-control form;

(2) Methods to address “problem” collections, including, but not limited to, collections involving “shy bladder” and attempts to tamper with a specimen;

(3) How to correct problems in collections; and

(4) The collector’s responsibility for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(b) *Alcohol collector qualifications.* Alcohol collectors shall be knowledgeable of the requirements of this part and the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to alcohol collection procedures. Collectors shall receive qualification training meeting the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) The alcohol testing requirements of this part;

(2) Operation of the particular alcohol testing device(s) [i.e., the alcohol screening devices (ASDs) or EBTs] to be used, consistent with the most recent version of the manufacturers’ instructions;

(3) Methods to address “problem” collections, including, but not limited to, collections involving “shy lung” and attempts to tamper with a specimen;

(4) How to correct problems in collections; and

(5) The collector’s responsibility for maintaining the integrity of the specimen collection process, carefully ensuring the privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(c) *Alternative collectors.* A medical professional, technologist, or techni-

cian may serve as a collector without meeting the collector qualification requirements in paragraphs (a) or (b) of this section, as applicable, only if all of the following conditions are met:

(1) A collector who meets the requirements of paragraphs (a) or (b) of this section cannot reasonably be made available at the time the collection must occur;

(2) The individual is not employed by the licensee’s or other entity’s FFD program and his or her normal workplace is not at the licensee’s or other entity’s facility;

(3) The individual does not routinely provide FFD program services to the licensee or other entity;

(4) The individual is licensed or otherwise approved to practice in the jurisdiction in which the collection occurs; and

(5) The individual is provided with detailed, clearly-illustrated, written instructions for collecting specimens under this subpart and follows those instructions.

(d) *Personnel available to testify at proceedings.* The licensee or other entity shall ensure that qualified collection site personnel, when required, are available to testify in an administrative or disciplinary proceeding against an individual when that proceeding is based on positive drug or alcohol test results or adulterated or substituted test results from specimens collected by or under contract to the licensee or other entity.

(e) *Files.* Collection site personnel files must include each individual’s resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluations and advancement; incident reports, if any; results of tests to establish employee competency for the position he or she holds, including, but not limited to, certification that collectors are proficient in administering alcohol tests consistent with the most recent manufacturer’s instructions for the instruments and devices used; and appropriate data to support determinations of honesty and integrity conducted under § 26.31(b).